

to do so. The agreement was sent to plaintiff for his consideration, and on 19th April he wrote defendants that he was advised by his attorney that "it would not be best for him to change the existing agreement."

On 31st January, 1895, defendants wrote plaintiff at Washington, enclosing a cheque for \$84.30, "being amount in full for royalty on document files for the year ending 31st December, 1894. We may say that the number of files sold has not amounted to 2,000, but under our agreement we pay you the full \$200, and have already remitted the following amounts;" specifying three sums amounting to \$115.70, as from 1st January to 7th November, 1894.

On 2nd February, 1895, plaintiff wrote acknowledging receipt of the cheque as "balance due in full for royalty on document holder for the year ending 31st December, 1894."

On 4th February, 1896, plaintiff wrote defendants thus: "Not hearing from you, I write to inquire when I may expect account and settlement of royalties for the year 1895 as per our agreement."

Defendants replied on 22nd February, 1896, with a statement shewing \$252.36 balance due plaintiff for the year 1895, after debiting themselves with royalty of \$300 for that year, and enclosing cash on account \$152.36. On 24th March, 1896, they remitted cheque for \$100, "being balance c^t account to 31st December, 1895." This was the last payment made by defendants, though they continued to manufacture the invention.

In the autumn of 1896 Seybold was again in Washington, where he had an interview with plaintiff, and told him that from that time forward the company would not pay any more royalties. The reason assigned for taking this stand was that the patent had, as defendants contended, become invalid in consequence of certain irregular importations, made as it would seem at the request of defendants themselves. They also demanded a return of the sum overpaid in the year 1896, but refused to pay anything more unless plaintiff would, as they said, come to terms, that is, accept ten cents royalty on each article then and afterwards manufactured, and repay the excess which had been overpaid *qua* minimum.

A letter of 17th November, 1896, from defendants to plaintiff was proved, referring to their recent interview in Washington, confirming the stand then taken by defendants, and asking for refund of the amount overpaid, "less what we are willing to keep to your credit on account of any future business." This letter does not seem to have been answered, but on 13th January, 1897, plaintiff wrote to de-